

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2002-792

February 11, 2003

**TIME WARNER CABLE INFORMATION  
SERVICES MAINE, LLC**

Petition for Finding of Public  
Convenience and Necessity to  
Provide Resold Interexchange and Facilities  
Based Local Exchange Telecommunication  
Service

ORDER GRANTING AUTHORITY  
TO PROVIDE FACILITIES-BASED  
LOCAL EXCHANGE SERVICE AND  
COMPETITIVE INTEREXCHANGE  
SERVICE AND APPROVING  
SCHEDULE OF RATES AND TERMS  
AND CONDITIONS

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WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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In this Order, the Commission grants Time Warner Cable Information Services Maine, LLC (Time Warner or Company) the authority to provide facilities-based competitive local exchange service and resold intrastate interexchange service in the State of Maine, and approves the Company's Terms and Conditions and Rate Schedules. We also exempt Time Warner from the requirements of Chapter 210, *Uniform System of Accounts*, and of 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

**I. BACKGROUND**

The Commission granted Time Warner permission to conduct a pilot program providing telephone services to its customers on April 7, 2000 in Docket No. 2000-285. On March 7, 2001, by advisory rule, the pilot program was extended to June 30, 2002, and Time Warner was required to report to the Commission on its plans for the pilot program by March 31, 2002. On May 3, 2002 Time Warner filed an application for authority to provide service as a Local Exchange Carrier and Interexchange Carrier; it was docketed as 2002-241. On June 3, 2002, Time Warner filed for an extension of the June 30 deadline set in Docket No. 2002-285. On June 11, 2002, the Commission granted the extension to allow Staff and interested parties more time to review the application. On July 3, 2002, Time Warner filed for an eight-month extension of the pilot program to allow for more time to workout some technical and operational issues. On July 25, 2002 the Commission granted the exemption and dismissed the application filed in 2002-241 without prejudice.

**II. APPROVAL OF APPLICATION TO SERVE**

On December 19, 2002, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, Time Warner filed a petition with the Commission requesting authority to provide facilities-based local exchange telephone service and interexchange service as a reseller in the State of Maine. Before we grant approval under section 2102 for another public utility to provide service, 35-A M.R.S.A. § 2105 requires us to find that the public convenience and

necessity require another utility to provide service in a location where utility is already authorized to provide, or is providing, the same or similar service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting Time Warner the authority to provide local exchange and interexchange services in Maine will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b).

Time Warner's application provides reasonable information indicating that its financial and management capabilities are adequate to provide local and interexchange services in Maine.

### **III. SERVICE AUTHORITY**

#### **A. Interexchange Service Authority**

Time Warner has requested authority to provide interexchange service as a reseller throughout the state. We grant that authority.

#### **B. Local Service Authority**

Time Warner has requested authority to provide facilities-based local exchange service in the municipalities of Biddeford, Cape Elizabeth, Casco, Cumberland, Falmouth, Gorham, North Berwick, North Yarmouth, Ogunquit, Old Orchard Beach, Peaks Island, Portland, Pownal, Raymond, Saco, Scarborough, South Portland, Wells, Westbrook, Windham, Yarmouth, and York to the extent that it has facilities available in those communities. We have reviewed materials provided by Time Warner to show facilities readiness and find sufficient proof that Time Warner has facilities in place. Individuals who are subscribers to Time Warner's high-speed data service in the State of

Maine will be eligible to receive the telephone service. If Time Warner wishes to expand its telephone service, it must file a request to amend this certificate and specify the specific exchanges where it proposes to offer service, including information establishing a readiness to provide facilities-based local exchange service within six months in the specifically identified areas.

#### **IV. APPROVAL OF TERMS AND CONDITIONS AND RATE SCHEDULES**

We allow the terms and conditions proposed by Time Warner to go into effect. Nevertheless, there is any conflict between a provision in Time Warner's terms and conditions and the Commission's Rules or a statute, the rule or statute will control. Included in the Terms and Conditions is a provision stating that in the event of such a conflict, the statute or the Commission's Rule will control.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of Time Warner's services and rates in the market place provides an adequate test of the reasonableness of the Company's rates. Accordingly, we allow the rates proposed by Time Warner to go into effect.

#### **V. INTERCONNECTION AGREEMENT(S)**

In order to provide local exchange service, a CLEC must, as a practical matter, obtain an interconnection agreement with the ILEC(s) providing service in any area where it intends to provide service. In the absence of such an agreement, it will not be possible for Time Warner's customers to call customers of the ILEC(s), and vice versa. Interconnection agreements are governed by 47 U.S.C. § 252, and must be approved by this Commission.

If a CLEC makes a bona fide request for an interconnection agreement with an ILEC that is a "rural telephone company" as defined in 47 U.S.C. § 153 (37), the "rural exemption" of 47 U.S.C. § 251 (f) will apply. All of Maine's independent incumbent local exchange carriers are "rural telephone companies." A rural telephone company is not required to negotiate an interconnection agreement or provide interconnection until after the Commission, pursuant to 47 U.S.C. § 251(f)(1)(B), finds that the requirement "is not unduly economically burdensome, is technically feasible, and is consistent with [the universal service provisions of] section 254 . . . ."

If Time Warner executes an interconnect agreement(s) with an ILEC(s), it shall obtain approval of that agreement by this Commission.

#### **VI. PAYMENT OF ACCESS CHARGES**

Our approval of Time Warner's application to provide interexchange service in Maine is conditioned on the payment of access charges to local exchange carriers (LECs) who have on file with the Commission approved access charge rate schedules.

Time Warner states that at present it will be offering service as a switchless reseller.<sup>1</sup> If Time Warner provides facilities-based interexchange service in the future, it must pay access charges directly to local exchange carriers. However, switchless resellers do not pay access charges to local exchange carriers. Instead, access charges are paid by an underlying facilities-based interexchange carrier. As a condition of granting authority to a switchless reseller to provide intrastate service in Maine, its underlying facilities-based carrier must also have authority to provide intrastate service in Maine. Time Warner has stated that MCI will be the underlying carrier from which it purchases interexchange services that it resells. MCI is authorized by the Commission to provide intrastate interexchange service and does pay access charges for the intrastate interexchange services it sells to switchless resellers providing interexchange service in Maine. If Time Warner begins to use another authorized underlying carrier, it shall notify the Commission as required by the ordering paragraphs.

## **VII. WAIVERS; REPORTING REQUIREMENTS**

As a condition of providing local exchange service, Time Warner must comply with the terms of any applicable Commission orders or rules that may govern local interconnection and compensation for interconnection. Time Warner shall also comply with any applicable Commission Rules or orders that govern universal service, public safety and welfare, service quality and consumer rights.

The Commission grants Time Warner a waiver from the requirements of Chapter 210 of the Commission's Rules, which governs telephone utility accounting, and from 35-A M.R.S.A. §§ 707 and 708, which govern reorganizations and affiliated interests. Because Time Warner's rates and operations are likely to be subject to market forces, we do not see any present need to subject the Company to those requirements. However, Time Warner must report its annual intrastate gross operating revenues and its annual intrastate minutes for use for the purpose of determining its regulatory assessment, and such other information requested by the Commission.<sup>2</sup> If Time Warner resells service to other

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<sup>1</sup>We define switchless resellers as entities which do not own, lease, or control any switching facilities, or private lines, that it will use to provide telecommunication services in Maine. A reseller who owns a switch in another state, and plans to use that switch to switch or carry Maine traffic, is a switched reseller. A reseller who does not own facilities in Maine or any other state, or who owns facilities in another state but does not plan to use that switch to carry Maine traffic, is a switchless reseller.

<sup>2</sup>The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

switched or switchless telephone service providers, the Company must maintain its records so that it may separately identify those sales.

In addition, Time Warner shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in Ordering Paragraph No. 3. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity.

## **VIII. OTHER REQUIREMENTS**

Time Warner shall comply with all applicable rules of the Commission and statutes of the State of Maine, including the customer notification rule described in the ordering paragraphs below.

## **IX. ORDERING PARAGRAPHS**

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of Time Warner to provide facilities-based competitive local exchange telephone service and resold interexchange service in the State of Maine; and

2. Exempt Time Warner from the requirements of Chapter 210 of the Commission's Rules, except that it must report the revenue and minutes of use information that is requested by the Commission, on or before April 1 of each year; and

3. Exempt Time Warner from approval requirements of 35-A M.R.S.A. §§ 707 and 708, but Time Warner shall provide notice to the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707 (1)(A), that results in a merger, sale or transfer of a controlling interest of Time Warner or of any entity that owns more than 50% of Time Warner. The notice required by this subsection shall be filed within 10 days following any reorganization described herein, as required by Chapter 280, § 12(B). As required by Chapter 280, § 12(C), Time Warner shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and any change of its contact person. Time Warner shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, Time Warner shall amend its rate schedules and terms and conditions to reflect any change in identity; and

4. Order that Time Warner's proposed terms and conditions and rate schedules (pages 1-46), attached to this Order, shall be effective on the date of this Order; and

5. Order that Time Warner, or an underlying facilities-based interexchange carrier authorized to provide interexchange service in Maine, shall pay interexchange

access charges as required approved access rate schedules filed by local exchange carriers.

Time Warner shall notify the Commission of any change in its underlying carrier within 30 days following the change. Any underlying carrier used by Time Warner shall have the authority to provide intrastate interexchange service in Maine. Time Warner shall immediately inform the Commission and all local exchange carriers in the State of Maine from which Time Warner will be purchasing access services if there is any change in its operations that will result in its carrying, switching, or any processing of any of its own traffic, at which time Time Warner shall begin to pay access charges directly to those local exchange carriers that have approved access charge schedules on file with the Commission; and

6. Order that Time Warner shall comply with all applicable rules of the Commission, including the requirement of Chapter 280 § 10 that interexchange carriers provide notice to all affected customers of an increase to any rate that is greater than 20%.

Dated at Augusta, Maine, this 11<sup>th</sup> day of February, 2003.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR: Nugent  
Diamond

COMMISSIONER ABSENT: Welch

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.